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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/553,108	04/20/2000	Edward S. Ellis	GJH-0017	4526

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EXAMINER
JOHNSON, JERRY D

ART UNIT	PAPER NUMBER
1764	(2)

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/553,108	ELLIS ET AL. 	
	Examiner Jerry D. Johnson	Art Unit 1764	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
Period for Reply			
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 			
Status			
<p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>11 November 2003</u>.</p> <p>2a)<input checked="" type="checkbox"/> This action is FINAL. 2b)<input type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>			
Disposition of Claims			
<p>4)<input checked="" type="checkbox"/> Claim(s) <u>1-3,5-29,31 and 32</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6)<input checked="" type="checkbox"/> Claim(s) <u>1-3,5-29,31 and 32</u> is/are rejected.</p> <p>7)<input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8)<input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.</p>			
Application Papers			
<p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input type="checkbox"/> The drawing(s) filed on _____ is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner.</p> <p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p style="margin-left: 20px;">Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11)<input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p>			
Priority under 35 U.S.C. §§ 119 and 120			
<p>12)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <p>1.<input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p>2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p>3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p> <p>* See the attached detailed Office action for a list of the certified copies not received.</p> <p>13)<input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.</p> <p>a)<input type="checkbox"/> The translation of the foreign language provisional application has been received.</p> <p>14)<input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.</p>			
Attachment(s)			
<p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.</p>		<p>4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input checked="" type="checkbox"/> Other: <i>copy of claims</i>.</p>	

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-21, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Angevine et al.

Angevine et al., U.S. Patent 6,150,575, teach diesel fuels which have good ignition qualities, good combustion emission performance and good low temperature characteristics are characterized by a cetane number of at least 45, a total aromatics content of 10 to 15 wt.%, a polynuclear aromatics content of less than 11 wt.% and a sulfur content of not more than 50 ppm (abstract). Table 3, columns 4 and 5 of Angevine et al., disclose preferred compositional parameters for the diesel fuel. In Table 4, Example 1, a diesel fuel having 14.0 wt.% total aromatics, 0.6 wt.% polynuclear aromatics, 13 ppm sulfur, IBP 183°C, T10 point 225°C and FBP 360°C is disclosed. Angevine et al. is relied on as cited above, but differ from the instant claims in teaching a maximum total aromatic content of 15 wt.% as opposed to the instantly claimed composition having a minimum total aromatics content of “about 20 wt.%”.

Applicants’ claims are directed to compositions comprising “about 20 wt.% aromatics”, i.e., the claims include compositions wherein total aromatics are less than 20 wt.%. It would have been obvious to one having ordinary skill in the art at the time the invention was made to increase the amount of aromatics in the diesel fuel taught by Angevine et al. to a maximum amount of “about 20 wt.%” based on the reasonable expectation that such a diesel fuel would

have similar properties, i.e., good ignition qualities, good combustion emission performance and good low temperature characteristics.

Claims 1-3, 5-29, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barry et al.

Barry et al., U.S. Patent 5,976,201, teach a diesel fuels comprising a straight run distillate fuel having an end point not greater than 300°C, a cetane number in the range of 55 to 60, a specific gravity not greater than 0.83, a sulfur content not greater than 0.1 wt % and an aromatics content of 18 to 25% (column 2, lines 1-9). The distillation of the fuel is controlled so as to limit the density of the fuel since high densities have been found to contribute significantly to the emission of particulates (column 2, lines 33-35). The final boiling point of the fuels is therefore held below about 315° C and preferably below 300° C. Provided that this limitation is observed, bicyclic and polycyclic aromatics will be substantially excluded (column 2, lines 42-46). The initial boiling points of the fuels is lower than conventional, typically in the range of 170° to 190° C. Ten percent points are typically in the range from about 200° to 220° C (column 2, lines 49-53). The addition of conventional diesel fuel additives are taught in column 3, lines 30+. In Table 1, column 4 of Barry et al, a diesel fuel having 0.01 wt% sulfur and 24 wt% aromatics is disclosed. Column 6, lines 20-21, of Barry et al. are directed to diesel fuels having a maximum sulfur content of 0.005 to 0.05 wt%. While Barry et al. differ from the instant claims in not disclosing a specific fuel having the claimed combination of properties, it would have been obvious to one having ordinary skill in the art at the time the invention was made to follow the above cited teachings to arrive at the instantly claimed composition.

Applicant's arguments filed November 13, 2003 have been fully considered but they are not persuasive.

Applicants argue

Angevine does not teach nor suggest that one should have a Total Aromatics content within the presently claimed range of 20-35 wt.%. Instead Angevine teaches that narrower ranges within the 10-15 wt.% Total Aromatics range would be beneficial. There is no disclosure that one should increase the range of Total Aromatics beyond 15 wt.%. Instead, Angevine teaches to limit the amount of Total Aromatics to lower than 15 wt.%. (Remarks, pages 8 and 9).

Applicants' argument lacks merit.

Applicants' claims are directed to compositions comprising "about 20 wt.% aromatics", i.e., the claims include compositions wherein total aromatics are less than 20 wt.%. It would have been obvious to one having ordinary skill in the art at the time the invention was made to increase the amount of aromatics in the diesel fuel taught by Angevine et al. to a maximum amount of "about 20 wt.%" based on the reasonable expectation that such a diesel fuel would have similar properties, i.e., good ignition qualities, good combustion emission performance and good low temperature characteristics.

Applicants argue

Barry states at col. 2 lines 33-44 that it is important to limit the boiling point of the distillate fuel compositions disclosed therein to below 315°C and preferably below 300°C, as pointed out by the Examiner. As stated above, the instantly claimed distillate fuel compositions boil in the range of about 190°C to 400°C, thus providing for a final boiling point outside of that disclosed by Barry, i.e., 400°C. (Remarks, pages 9 and 10).

Applicants' argument is without merit.

The claimed fuel composition does not require a final boiling point of 400°C. Rather, the claims simply require the final boiling point to be between the recited range, i.e., "about 190°C to 400°C."

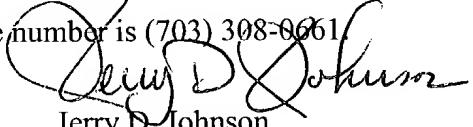
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry D. Johnson whose telephone number is (571) 272-1448. The examiner can normally be reached on 6:00-3:30, M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Calderola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Jerry D. Johnson
Primary Examiner
Art Unit 1764